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DEC 20 1999
FCC
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Petition for Reconsideration of Proposed First) CC Docket No. 96-45
Quarter 2000 Universal Service Contribution)
Factor) DA 99-2780
)

1. On December 10, 1999, the Federal Communication Commission (FCC) Common Carrier Bureau (CCB) released Public Notice, DA 99 - 2780, proposing first quarter 2000 Universal Service Contribution Factors. The Notice sets telecommunication carrier contribution levels for the first quarter of the year 2000. The Notice also directs the Universal Service Administrative Company (USAC) to allocate one quarter of unspent year one schools and libraries program funds to the reduction of carriers' first quarter contributions.

2. I ask the Commission to reconsider the CCB decision. Specifically, I ask the Commission to reconsider the CCB decision to reduce contributions using school and library program year one carryover funds to the extent the CCB has ordered. I also ask the Commission to allow unspent year one schools and library program funds to be used to fund year two applications beyond the \$2.25 billion cap, as provided in the Commission's original Report and Order, CC Docket number 96-45 at 54.507 (a), and outlined herein.

Background

3. To support Universal Service programs, the FCC sets telecommunication carrier contribution levels quarterly, as required under 54.709 (a), based on

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recommendations by USAC. On July 30, 1999, the Fifth Circuit Court (court) severely limited the way contributions could be levied by the CCB. Consequently, it was necessary for the CCB to quickly seek ways to mitigate effects of the court ruling.

4. USAC reported to the CCB that at least \$229 million from school and library program year one collections would not be spent. The CCB then directed USAC to reduce carrier contributions for the first quarter of 2000 by one fourth of the \$229 million estimated school and library program carryover, or \$57.25 million. The CCB Justified this action by the Commission's previous ruling, Public Notice, FCC 98-318 for rural health, that unused contributions should be credited back to contributors.

Discussion

5. The court ruling of July 30 created a tremendous problem for the FCC in the way it collects funds for universal service programs. Unable to assess intrastate revenues and putting international revenues into question, the FCC must rely, to a much greater extent, on contributions from interstate revenues for program funding. Unfortunately, interstate carriers have been quick to pass contribution assessments on to their customers in the form of line-item charges on bills. A significant increase in contribution requirements for interstate carriers may lead to even greater line-item charges for customers and possible public backlash against the program. Unspent year one funds from the schools and libraries program used to offset year two contributions offer the FCC a temporary reprieve from significant increases in interstate carrier contributions.

6. In making its decision to use unspent year one funds from the schools and libraries program to offset provider contributions, the CCB cited as precedent its actions with unused funds for the rural healthcare program. Citing this action with regard to the schools and libraries program is misleading. In the case of rural healthcare there was very little demand for funds, demonstrated by very few applications for funding, resulting in a situation where funding commitments were far less than fund allocation. On the other hand, demand for funds in the schools and libraries program for year one far exceeded available funds. In fact, schools and libraries program administration believed demand was so great, it limited funding for internal connections to applicants with discounts of seventy percent and above. Applicants with discounts below seventy percent requesting funding for internal connections in year one were all denied funding. Carryover funds from the schools and libraries program are not the result of a lack of demand, but rather gross miscalculation by the fund Administrator. As a party to this ongoing proceeding, I had not contemplated the possibility that the precedent set with the ruralhealth care program would even be considered for schools and libraries.
7. The possibility of large unused funds for the schools and libraries program was brought to the attention of the FCC (Weisiger, Petition for Consideration of Certain Changes in E-rate Regulations at 13 through 15, dated February 18, 1999), and to the Administrator (letter to Kate Moore dated March 4, 1999). Both letters were submitted

before all year one commitment letters had been issued and with sufficient time for both the FCC and the Administrator to reevaluate funding levels and fund additional applicants.

8. The CCB, in DA 99-2780 at 6, indicated that USAC reported a balance of approximately \$229 million after disbursements for year one of the schools and libraries program, although the final balance could change once all properly completed forms are received from schools and libraries. Based on limited information available at the present time, I expect the final unspent total for year one could be substantially more and approach \$500 million. If the final tally does increase from the \$229 million current estimate, I would hope the FCC would investigate the causes of such a large miscalculation.

9. Another consideration the CCB used to determine the fate of unspent year funds from the schools and libraries program was the FCC's Twelfth Order on Reconsideration in CC Docket Number 96-45, released May 28, 1999. In this Order the FCC set the funding cap for schools and libraries at \$2.25 billion for the period from July 1, 1999 through June 30, 2000. However, in the same Order, the FCC also limited fund disbursement to the same \$2.25 billion for the period. Several petitioners asked the FCC to fund the schools and libraries year two program to the funding cap of \$2.25 billion, with the assumption that any year one carryover funds would indeed be used to fund year two applications beyond the \$2.25 billion cap, in accordance with 54.507 (a).

10. In a petition filed after the Twelfth Order, I asked the FCC to add any year one carryover funds to the \$2.25 billion cap (Weisiger, Petition for Rulemaking, received July 26, 1999). Several other parties have also filed similar petitions.

11. Finally, although the Administrator has committed funding for all applications at all funding levels for all services received within the year two filing window, some 2,000 applications were received outside the filing window - some delivered only hours after the filing window closed. Demand for funding by schools and libraries across the nation remains strong and continues to exceed funding supply. Because a limited amount of funds will be available after funding applications filed within the window, the Rules of Priority may apply, which means applications filed only hours outside the window may not receive any funding.

Conclusion

12. The FCC must consider the political ramifications of significant increases in contribution requirements for interstate carriers against the needs of applicants that failed to be funded in year one and filed funding requests outside the window in year two. The FCC must also determine if the Administrator is now better able to calculate the amount of money it commits to schools and libraries and more accurately estimate committed-but-unspent funds for year two. Based on year one performance, I remain skeptical of the Administrator's capability.

13. I propose to the FCC a twofold strategy. First, I suggest the FCC determine the potential for committed-but-unspent funds for year two, in percentage terms. Once that determination is made, the FCC should instruct the Administrator to increase commitments by that percentage and begin funding applications received outside the filing window. Second, I propose a compromise for allocating year one carryover funds. I suggest the FCC reconsider its first quarter contribution levels, released in DA 99-2780,

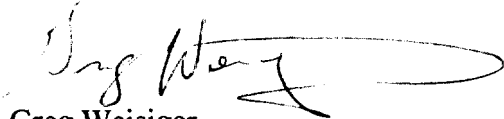
and adjust year one carryover funds applied to contributors to \$50 million, for the first quarter, and \$50 million each in succeeding quarter, until \$200 million has been reached. The FCC should also order USAC to provide updated estimates of additional year one carry over funds (beyond \$229 million) as they become available, but no later than January 21, 2000. Those additional funds, if any, should be used to fund applications received outside the year two filing window on a first-come-first-served basis, once \$250 million has been committed to applicants under the Rules of Priority, under 54.507 (g). Because a final tally of available funds will not be known before at least early 2000, applicants falling under the Rules of Priority should be funded immediately. Once those commitments are made, the balance of year one carryover funds (minus \$200 million dedicated to carrier contribution reductions), and any remaining year two funds, should fund applications received outside the window on a first-come-first-served basis. To facilitate this, I ask the FCC to limit participants under the Rules of Priority only to applications received before December 20, 1999, and waive the public notice requirement of the Rules of Priority.

14. This action would be consistent with the original Report and Order, 54.507(a), and would go a long way to correct mistakes and miscalculations made by the Administrator in year one funding that resulted in such a large carryover. If USAC reports year one carryover exceeds \$400 million (20 percent of year one contributions), I urge the FCC to open an inquiry of the Administrator to determine how a mistake of such magnitude could be made, and take steps to ensure it does not happen again.

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15. I submit this petition in the interest of satisfying the needs of applicants in balance with ongoing public and private support of this important program.

Respectfully submitted this 20th day of December, 1999,



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